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State Senator Steve Cassano
State Representative Linda Gentile
Planning & Development Committee
300 Capitol Avenue, Room 2100
Hartford, CT 06106

RE: Raised Bill 343

Dear Sirs:

Due to recent surgery, and prior commitments, I am unable to appear before your committee on March 9th. However, I would like to register my support for Raised Bill 343. I have been practicing law for just short of 50 years. A substantial portion of my practice has been related to land use and land use litigation. Over the years I have represented developers, municipalities, individuals and state agencies. I have appeared on all sides of land use matters. I have represented applicants seeking to develop property, property owners opposed to development, planning and zoning commissions and inland wetlands commissions. I have also represented developers who have funded and supported opposition suits to prevent competition.

Unlike other areas of the law, there has been a carve out for environmental matters which do not require a litigant to have standing to bring any action or intervene in an administrative proceeding. Requiring standing has been the system's way to prevent the courts from having to deal with frivolous litigation. Standing focuses on whether a prospective plaintiff can show that some personal legal interest has been invaded by the defendant. It is not enough that a person is merely interested as a member of the general public in the resolution of a dispute. The person must have a personal stake in the outcome of the controversy. Not so with environmental matters. Current environmental legislation does not require this. Giving each member of the general public enforcement power, not only frustrates legitimate development, it also denigrates local and state agencies which are charged with the regulation of environmental matters. As it is now, The DEEP or a local wetlands agency can spend hours analyzing an application, with no indication of dispute, only to have an objector appear out of nowhere, with nothing more than a

whimsical desire to prevent development. The Raised Bill would make a contestant prove that there is more than a general interest in the outcome.

Perhaps a few anecdotes will help you understand the problems that are caused by the current legislation. I represented the Towns of Newington, New Britain and West Hartford in connection with the building of Route 291. All three towns approved the design and layout of the road, after extensive hearings before a number of their respective commissions. After the approvals and after construction had started, a group out of Fairfield County that had held up Route 7, brought an action to enjoin the road being built. No one from this group was ever identified. No one appeared at any of the administrative hearings in any of the municipalities. We tried the case over a two month period on the issue of the temporary injunction. Fortunately, we were successful. If we had lost the Temporary Injunction, the road project would have stopped and the ensuing litigation over the permanent injunction would have tied up the project for years, perhaps even scuttling it.

Another example of why this amendment is needed is a situation which occurred in New Haven County. Local zoning and inland wetlands boards approved a substantial shopping center project near an exit off I95. The Town wanted the project and it did not impact local residential areas. The owner of two competing shopping plazas, each within ten miles of the project, organized and funded local opposition. They funded appeals and, through their surrogates, made it clear that they would also bring environmental litigation. The prospect of spending years in the courts and hundreds of thousands of dollars on legal fees and options caused the developer to walk away. I was also involved in a similar proceeding seeking to derail New Haven's downtown development.

On the other side, a small group of homeowners used environmental legislation to tie up a commercial development in a Hartford County town. After years of repeated appeals and suits, it was only the threat of vexatious litigation that brought about a resolution. Once a battle is joined, the legal costs to an applicant can run in the hundreds of thousands of dollars. The court process can take years. While zoning cases are generally fast tracked, environmental cases are not. The current legislation is anti-development. The amendments do not create a guaranteed right of way. They don't eliminate the right of affected parties to seek redress. The safeguards that are built into Raised Bill 343 will not prevent legitimate opposition to projects that are likely

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to have an environmental impact. The bill will make sure that the opposition is legitimate. It will also give all parties the opportunity to have the legitimacy of their claims determined in a timely and efficient manner.

I hope that some change will come from Raised Bill 343. Under any circumstance, change is necessary to create a level playing field in the development process in Connecticut. The municipal commissions and state agencies that are charged with regulating environmental matters should be given the same respect as zoning and planning commissions. The process should not be able to bypass those forums. If there are legitimate concerns to be raised, they should be raised early enough in the process so that they can be addressed. First resort should not be to the courts. There are special courts hearing zoning matters, administrative appeals and affordable housing. While this bill doesn't necessarily do that, it speeds up the process for determining the bona fides of a claim. I urge you to report favorably in Raised Bill 343.

Yours truly;

Mark S. Shipman

cc. Richard P. Hayes
Planning and Development Committee Members